

MOHD NAJIB SULAIMAN

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v.

SULAIMAN HJ MOHD YUSOF & ORS

HIGH COURT MALAYA, KUALA LUMPUR

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VARGHESE GEORGE JC

[SUIT NO: S1-21-198-2002]

30 SEPTEMBER 2010

ADMINISTRATIVE LAW: *Public servants - Dismissal - Dismissal of police chief inspector - Action to declare dismissal unconstitutional and void - Allegation that disciplinary charges vague and lacked particulars - Whether documents relied upon for disciplinary proceedings should have been supplied to accused - Whether failure to establish Committee of Investigation fatal - Whether court could review decision of Disciplinary Authority on punishment - Public Officers (Conduct and Discipline) Regulations 1993, reg. 28*

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POLICE: *Disciplinary proceedings - Dismissal - Dismissal of police chief inspector - Disciplinary charges - Whether vague and lacked particulars - Whether documents relied upon for disciplinary proceedings should have been supplied to accused - Whether failure to establish Committee of Investigation fatal - Whether court could review decision of Disciplinary Authority on punishment - Public Officers (Conduct and Discipline) Regulations 1993, reg. 28*

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The plaintiff brought an action against the defendants for a declaration that the termination of his services as chief inspector with the Royal Malaysian Police was unconstitutional and void. He sought an order that he be reinstated to his former position with all salary, allowances and/or privileges and promotions due to him. He also claimed for special, general, exemplary and punitive damages against the defendants. The plaintiff's case was that the procedures and safeguards in reg. 28 of the Public Officers (Conduct and Discipline) Regulations 1993 had not been complied with and that he had not been afforded a fair and reasonable opportunity of being heard on the charges against him. At the material time, disciplinary proceedings of police officers were governed by the said Regulations and the second defendant alone constituted the relevant Disciplinary Authority. Specifically, the plaintiff's complaint was that (i) the charges were vague and did not set out adequate details and particulars (ii) material information and documents referred to or relied upon by the Disciplinary Authority were not made available to him to enable him to make full and adequate representation and (iii) the Disciplinary Authority failed to establish a Committee of Investigation to enable him to adduce oral evidence to explain away the charges. The plaintiff also argued that his dismissal from service was an unreasonable and severe punishment which the court ought to review, if not set aside.

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A Held (dismissing the action):

- (1) The charges were not vague, confusing or misleading. The breaches of discipline allegedly committed by the plaintiff were fully identified and discernible from the contents of the charges. (para 19).
- B** (2) Sufficient details and particulars of the circumstances underlying the charges were provided to the plaintiff. This was borne out by the fact that he addressed all the charges in detail in the written representations he subsequently made in response. (paras 17 & 18)
- C** (3) There was no legal obligation on the Disciplinary Authority (the second defendant) to extend to the plaintiff as a matter of right all documents based on which the charges were framed unless the plaintiff had specifically requested for them. The plaintiff did not request for such documents. In any case, the non-production of any of those documents to the plaintiff did not in any way prejudice or deprive him of the opportunity to fully answer the charges against him. (paras 20, 24 & 26)
- D**
- (4) Whether or not to constitute a Committee of Investigation was a matter left to the absolute discretion of the Disciplinary Authority (the second defendant). The court could not question the Authority's prerogative. There was no evidence led by the plaintiff of any *mala fides* on the second defendant's part in deciding not to constitute a Committee of Inspection. (paras 29-31)
- E**
- (5) The court could not go into the issue of whether the punishment was fair or excessive. That was left to the Disciplinary Authority to decide in the context of each case. Only the decision-making process was subject to scrutiny by the court and not a review as to the decision on punishment. No fundamental flaw in the decision-making process leading to the punishment meted out to the plaintiff had been shown. (paras 39 & 41)
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Case(s) referred to:

- Abd Razak Atan v. Dato' Ahmad Ragib Mohd Salleh & Ors* [2010] 6 CLJ 887 CA (**refd**)
- H** *Abdul Aziz Mohd Alias v. Timbalan Ketua Polis Negara, Malaysia & Anor* [2010] 3 CLJ 643 FC (**refd**)
- Chai Kok Choi v. Ketua Polis Negara & Ors* [2008] 1 CLJ 113 FC (**refd**)
- Ganasan Marimuthu v. Public Services Commission & Anor* [1998] 4 CLJ 331 CA (**refd**)
- Gnasekaran Krishnasamy v. Suruhanjaya Perkhidmatan Awan & Anor* [Rayuan Sivil No: 01(f)-4-2009] (Unreported) (**refd**)
- I** *Lembaga Tatatertib Perkhidmatan Awam Hospital Besar Pulau Pinang & Anor v. Utra Badi K Perumal* [2001] 2 CLJ 525 FC (**refd**)
- Mat Ghaffar Baba v. Ketua Polis Negara & Anor* [2008] 1 CLJ 773 CA (**refd**)

Public Services Commission Malaysia & Anor v. Vickneswary RM Santhivelu [2008] 6 CLJ 573 FC (*refd*) A

Raja Abdul Malek Muzaffar Shah Raja Shahrizzaman v. Setiausaha Suruhanjaya Pasukan Polis & Ors [1995] 1 CLJ 619 CA (*refd*)

Tan Tek Seng v. Suruhanjaya Perkhidmatan Pendidikan & Anor [1996] 2 CLJ 771 CA (*refd*) B

Legislation referred to:

Rules of the High Court 1980, O. 53

Public Officers (Conduct and Discipline) Regulation 1993, reg. 28(1), (3), (4)

For the defendant - Shamsul Bolhassan SFC, AG's Chambers C

For the plaintiff - Rudeen Chua Kim Hong; M/s Rajendran & Deen

Reported by Ashok Kumar

JUDGMENT D

Varghese George JC:

[1] This action was brought by the plaintiff by way of a writ of summons for a declaration that the termination of his services as a Chief Inspector with PDRM (3rd defendant) was unconstitutional, void and of no effect in law. The plaintiff also sought from this court an order that he be reinstated to his former position with all salary, allowances and/or privileges together with promotions in the meanwhile due to him, and also for special, general, exemplary and punitive damages to be paid by the defendants. E F

[2] After having given due consideration to the oral and documentary evidence led at the trial before me, the written submissions of respective counsel and the many decided authorities pertaining to the law and issues related with the dismissal of Police personnel or public servants which were cited to me, I found no reason to interfere with the decision of 2nd defendant (the Ketua Polis Negara), to terminate the plaintiff's services with PDRM (3rd defendant) as of 19 April 2000. Accordingly on 9 July 2010, I dismissed the plaintiff's action and awarded cost to the defendants. G H

[3] I also did on that day read out the broad grounds for my decision and reserved the right to issue a more complete decision, should there be an appeal. I now set out the full grounds for my decision. I

[4] As noted above, the action before me was by way of a writ action. It was not a judicial review proceeding pursuant to O. 53 of the Rules of the High Court 1980.

A [5] The question of law posed to the Federal Court for determination recently in *Ahmad Jefri Mohd Juhari @ Md Johari v. Pengarah Kebudayaan & Kesenian Johor & Ors*, which involved the dismissal of a government officer attached to Ministry of Culture Arts and Tourism, included -
B whether it was an abuse of the process of the court to commence the proceedings by way of a writ and a statement of claim to challenge the decision of a public authority instead of filing an application for judicial review under O. 53 RHC 1980 thereby evading the clear requirement of O. 53 RHC 1980.

C [6] James Foong FCJ in delivering the judgment of court - stated:

[61] We observed that a challenge on the use of appropriate procedure is very much fact based. Thus, it is necessary for a judge when deciding on such matter to first ascertain whether there is a public law element in the dispute. If the claim for infringement is based solely on substantive principles of public law then the appropriate process should be by way of Order 53 RHC. If it is a mixture of public and private law then the court must ascertain which of the two is more predominant. If it has substantial public law element then the procedure under Order 53 RHC must be adopted. Otherwise it may be set aside on ground that it abuses the court's process. But if the matter is under private law though concerning a public authority, the mode to commence such action under Order 53 RHC is not suitable. Aside from this, there could be other circumstances like the kind in YAB Dato' Dr. Zambry. Much depends on the facts of the case. But generally the court should be circumspect in allowing a matter which should be by way of Order 53 RHC to proceed in another form. To say that it is opened to any applicant seeking judicial review to elect any mode he prefers, as implied in Kuching Waterfront, would, in our considered opinion, be rendering Order 53 RHC redundant. This is certainly not the intention of the drafters of this rule who had a purpose in mind. When the purpose of this rule is in the interest of good administration then this rule must be adhered to except in the limited and exceptional circumstances discussed.

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H [63] As to the second question, we are of the firm conviction that the appellant's claim for infringement of his rights by the respondents is based solely on public law. There is no trace of private law involvement nor do the circumstances justify it to be an exception to the general rule. For this, we agree with the courts below that the appellant's writ should be struck off as an abuse of the court's process.
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This strong and clear enunciation of the law, which I accept to be the correct position, was brought to my attention at the close of the trial. Although this position in law was urged upon me by the SFC for the defendants, I must for the record state that I did not dismiss this action just because it was brought by way of a writ action and not as a judicial review proceeding pursuant to O. 53 of RHC, 1980. This matter had proceeded all along as a writ action up to the stage of the full trial without objection by the defendants. It would not have been fair and just to the plaintiff to deny consideration of the plaintiff's claims at that stage on a rather 'technical' ground.

[7] Be that as it may, irrespective of whether by writ or judicial review, it has been repeatedly affirmed that this court in proceedings of this nature has only a limited supervisory role, namely, to ascertain that the concept of natural justice and procedural fairness had been fulfilled and there has been strict compliance with statutory prescriptions in the proceedings leading to plaintiff's dismissal. This court is not required to embark upon an evaluation of evidence before the disciplinary authority or the merits of the case against the plaintiff by analyzing the relative probative force or of the sufficiency of such evidence placed before the disciplinary authority.

[8] There was no dispute that disciplinary proceedings of Police officers was governed by the Public Officers (Conduct and Discipline) Regulation 1993, and that 2nd defendant (Ketua Polis Negara) by himself alone at the material time constituted the relevant disciplinary authority.

[9] It was also not in dispute that procedures applicable in cases where the alleged breach of conduct is considered to warrant a dismissal or reduction in rank was reg. 28 thereof nor was there any dispute of the fact that the 1st defendant exercised his functions, duties and responsibilities as instructed by and on behalf of 2nd defendant (Ketua Polis Negara) in respect of disciplinary matters as empowered by the "Instrument of Delegation of Certain Functions, Powers, Duties and Responsibilities (P.U.(B).621/1985).

[10] The plaintiff's case essentially was that the procedures and safeguards enshrined in reg. 28 had not been complied with and that plaintiff had not been afforded a fair and reasonable opportunity of being heard on the charges levelled against him. The thrust of the plaintiff's arguments were threefold in my assessment:

- (a) That the charges brought against plaintiff were vague since adequate details or particulars were not set out;

A (b) Material information or documents that had been admittedly referred
or relied upon by 2nd defendant (Ketua Polis Negara) in coming to
a '*prima facie*' decision and subsequently in considering plaintiff's
representation had not been extended to plaintiff and accordingly
B plaintiff was denied a fair hearing as all evidence that was/or were
against him were not made known to him for him to make in any
event a full and adequate representation.

(c) Arising from the written representation submitted by the plaintiff, the
2nd defendant (Ketua Polis Negara) should have established a
committee of investigation pursuant to reg. 28(4) to enable the
C plaintiff to adduce oral evidence to explain away the charges against
him.

[11] Regulation 28(1), reg. 28(3) and reg. 28(4) in so far as are
relevant for the purposes of this grounds of decision are reproduced
D here:

28. (1) The appropriate Disciplinary Authority sitting to consider a
case where the breach of discipline complained of has been
found to be of a nature which merits a punishment of
dismissal or reduction in rank shall consider all the available
E information and where it appears that there is a prime facie
case against the officer for dismissal or reduction in rank, the
appropriate Disciplinary Authority shall direct that a
statement containing the facts of the breach of discipline
alleged to have been committed by the officer and any
proposed ground on which the officer is to be dismissed or
F reduced in rank be sent to the officer and shall call upon him
to make a written representation, containing grounds upon
which he relies to exculpate himself, within a period of not
less than twenty-one days from the date of receipt of the
charge.

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(3) If the officer does not furnish any representation within the
period specified in subregulation (1), or if the officer
furnishes a representation which does not exculpate himself
to the satisfaction of the appropriate Disciplinary Authority,
H the Disciplinary Authority shall then proceed to consider and
decide on the dismissal or reduction in rank of the officer.

(4) Where the appropriate Disciplinary Authority is of the
opinion that the case against the officer requires further
clarification, the Disciplinary Authority may appoint a
Committee of Investigation comprising not less than two
I government officers who are senior to the officer under
investigation.

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...

[12] Counsel for plaintiff rightfully conceded that the 'right to be heard' in administrative law does not necessarily mean a right of 'oral hearing' always and that within the scheme of reg. 28 the right to adduce any oral evidence is only available if a committee of investigation pursuant to reg. 28(4) is set up, that is, "where the disciplinary authority" (in this case the 2nd defendant) was of the opinion that further clarification was required.

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Charges Written Representation

[13] Were then the four charges set out in the letter of 14 August 1999, wherein the plaintiff was requested to submit a written representation to exculpate himself, vague or lacking in sufficient detail or particulars so much so that the plaintiff could not make an adequate representation in respect of each of the charges?

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[14] I have read and reread the said letter of 14 August 1999 and also plaintiff's written representation dated 1 September 1999 in response. It must be highlighted here that the lengthy written representation submitted by the plaintiff was set out in six typed-pages with eight lampiran (attachments) as supporting documents (pp. 18 to 23 of the ikatan dokumen tambahan).

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[15] I could not from my examination of contents of the said two documents find any reason to agree with the plaintiff's contention that the charges were vague or that they did not set out sufficient and relevant details and particulars to enable the plaintiff to make a considered and studied representation. It did not appear to me that the charges lacked details or precision as to what the plaintiff was required to respond to and indeed the plaintiff did address those charges.

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[16] Each of the charges ought to be separately read in the context of the matters complained therein. In respect of the 1st charge although time or location were not set out therein, the material dates during which the alleged solicitation of the specified RM50,000 as a bribe for a corrupt purpose, which is also identified, is fully set out. The context and focus of the charge here is the soliciting of a bribe for a corrupt purpose and in my view the providing of the dates - 8 June 1999 to 10 June 1999 - as the period during which this was alleged to have taken place, amounted to sufficient particulars for the plaintiff to address his mind and make his response to that charge.

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[17] There was no doubt in my mind at all as well, that in respect of all the other three charges there was similarly provided to the plaintiff sufficient details and particulars of the circumstances underlying the charges brought against him.

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A [18] This was borne out by the fact that the plaintiff addressed all the charges in detail in the written representations he subsequently made in response.

B [19] The charges were therefore not vague. I do not find any merit in the plaintiff's suggestion that they were confusing or misleading either. The breaches of discipline allegedly committed by the plaintiff was fully identified and also discernible from the contents of the charges.

C [20] The other related issue raised by the plaintiff in respect of the proceedings at this stage was that material information contained in some other documents, based on which the charges were framed, had not been extended to the plaintiff together with the charges. Decided case-authorities of our superior courts on this point, to which I am bound, are clearly to the effect that there was no obligation on the disciplinary authority (here the 2nd defendant) to extend all such documents referred or relied upon unless it had been specifically requested for by the person charged.

E The Federal Court in *Chai Kok Choi v. Ketua Polis Negara & Ors* [2008] 1 CLJ 113 affirmed the Court of Appeal decision there in that case in the following terms: "... there is no added duty on the disciplinary authority to provide documents without any request being made by the offending officer." (See also Court of Appeal in *Raja Abdul Malek Muzaffar Shah Raja Shahrulzaman v. Setiausaha Suruhanjaya Pasukan Polis & Ors* [1995] 1 CLJ 619. Contrast this with *Mat Ghaffar Baba v. Ketua Polis Negara & Anor* [2008] 1 CLJ 773 where there was a specific request for documents but which was not provided to the officer concerned.)

G [21] The plaintiff here in this instant case under cross-examination admitted that he did not request for such documents at all. His explanation was that he did not know the law. Ignorance of the law especially by a public servant, who is governed by specific procedure as to his tenure or terms of his service, is not an excuse that can be accepted. (*Abdul Aziz Mohd Alias v. Timbalan Ketua Polis Negara, Malaysia & Anor* [2010] 3 CLJ 643).

H [22] I also need to highlight here that in the letter of 14 August 1999 ie, the letter to plaintiff requesting plaintiff's written representation on the four charges, the opening paragraph expressly refers to a 'laporan'. It is as follows:

I Saya diarah oleh Ketua Polis Negara memaklumkan anda bahawa satu laporan telah diterima oleh pihak berkuasa tatatertib ...

and further in para. 2 it is further expressed:

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... setelah menimbangkan laporan itu

[23] It was therefore clear that the plaintiff had been given notice of this document and that the 2nd defendant's decision to issue the charges against him was in reliance of the same. Yet, it is significant and noteworthy that the plaintiff did not request at all to be given a copy of the same before submitting his written representation. This could only mean that the plaintiff was satisfied with the details furnished of the charges against him. He well knew of the existence of the 'laporan' but did not ask to see a copy of the same.

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[24] I have read again through the rather substantive written representations of the plaintiff dated 1 September 1999 and from the tenor and extent of the matters covered therein by the plaintiff, I do not agree that the non-production of any of the following (as argued by counsel for the plaintiff), namely:

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- (a) Borang maklumat (in evidence at pp 5 and 6 of the IDT);
- (b) the laporan - part of which marked as 'D4' was in evidence at pp. 7 and 8 of the IDT);
- (c) Kertas siasatan lengkap; and
- (d) 'dokumen-dokumen lain';

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to the plaintiff before the written representation was submitted had deprived the plaintiff of the opportunity to fully answer the charges or had in any way prejudiced the plaintiff in answering the charges brought against him.

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[25] Regulation 28(1) only required a statement containing the facts of the breach of discipline alleged to have been committed by the officer and any proposed ground on which the officer was to be dismissed or reduced in rank to be sent to the officer.

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[26] The point remains, plaintiff did not request for such documents and there does not in law arise any obligation on 2nd defendant (Ketua Polis Negara) to extend such documents as a matter of right, to the plaintiff.

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Mitigation Committee Of Investigation

[27] After having considered the written representation of the plaintiff dated 1 September 1999, the 2nd defendant went on to make a decision to the effect that the explanations rendered by the plaintiff therein did not exculpate the plaintiff of charges Nos. 1, 2, and 3. Plaintiff was

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A informed of the said decision by letter of 28 October 1999 and plaintiff was then invited to make a plea in mitigation before punishment was imposed.

[28] Plaintiff proceeded to submit his 'rayuan' (mitigation) by way of a letter dated 23 November 1999.

B [29] To be noted here, firstly, was that the plaintiff did not, if he was dissatisfied with the conclusion reached by the 2nd defendant (Ketua Polis Negara) request at this stage for a committee of investigation to be set up on any aspect of the fact or surrounding circumstances that were disputed by him and raised in his written representation.

C [30] Secondly, reg. 28(4) clearly sets out that a committee of investigation is only set up if the disciplinary authority is of the opinion that the case against the officer requires further clarification after considering the representations made by the alleged offender. This court cannot question this prerogative left to the disciplinary authority. There was no evidence led by the plaintiff of any *mala fide* on the part of 2nd defendant (Ketua Polis Negara) in coming to this decision not to constitute a 'committee of investigation'.

D [31] In *Public Services Commission Malaysia & Anor v. Vickneswary RM Santhivelu* [2008] 6 CLJ 573 it was emphatically held by the Federal Court that only when the disciplinary authority considers that the case against the officer requires further clarification need the disciplinary authority appoint a 'committee of inquiry' (as it was termed in that case). It was purely for the disciplinary authority and not for the officer concerned or for the court to so decide, the court there ruled.

F [32] Zaki Tun Azmi (PCA then) delivering the judgment of the Federal Court reaffirmed the relevant principle as follows:

G ... the decision whether to refer a case to a committee of inquiry is the discretion of the disciplinary authority. In so deciding whether to refer to the committee of enquiry, the disciplinary authority would have to consider the written representation of the respondent ie, whether his written representation exculpated him from the charges preferred against him.

H From these [GOs], it can be clearly concluded that it is the disciplinary authority and not the Court who is to decide whether the officer in his written representation has exculpated himself.

I [33] Whether to constitute a committee of investigation is a matter left to the absolute discretion of the disciplinary authority (here the 2nd defendant) after having given due consideration to the explanations and

whether the version of the events given by the plaintiff was convincing enough to exculpate the plaintiff from the charges. It is further observed in the same case of *Vickneswary* above: **A**

From the provisions of the [general orders] it is clear that it is never the intention of the legislators that the courts should step into the shoes of the disciplinary authority in deciding whether it was fair to the [respondent] to have granted him a right to make oral representations or whether he should be given such right although he did not ask for it. **B**

[34] This court, as earlier stated, has only a 'supervisory function' as to whether the decision making process has followed the procedure laid down and is not required to go into the merits of such decision unless fraud or '*mala fide*' is shown. **C**

[35] The Court of Appeal in an earlier case *Ganasan Marimuthu v. Public Services Commission & Anor* [1998] 4 CLJ 331 had also on the same point held as follows: **D**

... it is only when the disciplinary authority deems it necessary to appoint, and does appoint a committee of inquiry under the [General Orders] does a person have the opportunity of giving oral testimony to exculpate himself. There the matter stopped at the disciplinary authority stage where [General Order 26(4)] was applicable ... 'a fair hearing' does not mean that there must be an opportunity to be heard orally; but opportunity offered to make the written representation is sufficient to meet the demands of fairness. **E**

Punishment **F**

[36] There is also a somewhat diagonal argument taken by counsel for plaintiff in his closing submissions as to the reasonableness of the punishment of dismissal meted out to the plaintiff in this case. Counsel contended that it was excessive or severe and ought to be interfered by this court, if not set aside completely. **G**

[37] In *Ng Hock Cheng v. Pengarah Am Penjara & Ors* [1998] 1 CLJ 405 the Federal Court per Peh Swee Chin FCJ in very clear language stated as follows:

It cannot be denied further that the disciplining of a public officer by his department head, is part of the function of the executive branch of the government and any usurpation by a court will be viewed with something very much more than disfavour even through the judiciary is that judicial branch of the government as well as an institution which belongs to the people. To repeat, a court intervenes only on the nature and manner of accusation against a public officer as distinct from a consequential punishment as explained above. **H**
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- A Just like a professional body being the best tribunal to judge the seriousness of misconduct of its members, in a similar vein, an employer, including a government is the best person to judge similarly the seriousness of misconduct of an employee.
- B [38] The Federal Court there in the above case disagreed with the majority view of the Court of Appeal in *Tan Tek Seng v. Suruhanjaya Perkhidmatan Pendidikan & Anor* [1996] 2 CLJ 771 and in endorsing the dissenting judgment (in the Court of Appeal) there, went on to affirm the principle that whether dismissal or a lesser penalty (like a reduction in rank) was appropriate was not for the court to say. In
- C other words, the court should not substitute its own view as to what is the appropriate penalty.
- D [39] It is my considered view, based on that authority of our highest court and other decided cases in this area, that this court should not also go into the issue of punishment, namely, whether it was fair or excessive. That has been left to the disciplinary authority to decide in the context of each case. Only the decision making process is subject to scrutiny by this court and not a review as to the decision on punishment.
- E [40] The comments of Justice Hishamuddin Yunus, J in the Court of Appeal decision in *Zulkifli Hashim v. Ketua Polis Daerah Barat Daya & Ors* specifically relied upon by plaintiff's counsel to persuade this court to intervene and set aside the punishment, it must be pointed out, was a dissenting opinion. There too, the learned judge acknowledged the
- F general rule that a court of law cannot question as to whether or not a particular punishment imposed by an administrative authority, in the exercise of its disciplinary function, is appropriate or otherwise and cannot substitute that punishment with another punishment but opined however that under an exception to that rule, the court could still apply the Wednesbury principle to assess whether the punishment was one
- G which a reasonable authority could have imposed.
- H In *Lembaga Tata tertib Perkhidmatan Awam Hospital Besar Pulau Pinang & Anor v. Utra Badi K Perumal* [2001] 2 CLJ 525. The Federal Court (in the context of General Orders 1980 (Cap. 'D') pertinently further observed as follows:
- ... there is certainly no separate right to make representations upon the punishment to be meted out to the officer to be dismissed or reduced in rank.
- I [41] In any event, I do not think that in this case the 2nd defendant acted arbitrarily or unfairly or took into consideration 'extraneous matters' in coming to his decision to dismiss the plaintiff. No evidence was led on this at all and it must be highlighted here that the 2nd

defendant himself was present as witness at the trial to defend his decision and be subjected to cross-examination by plaintiff's counsel. There has not been shown to my satisfaction any fundamental flaw in the decision making process leading to the punishment meted out to the plaintiff.

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Not Charged With Any Criminal Offence

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[42] The fact that the plaintiff was not charged of any criminal offence related to the disciplinary charges on which he was found to have breached his condition of services, is also in my finding irrelevant to the issues at hand before this court.

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[43] Our Federal Court in the case *Gnasekaran Krishnasamy v. Suruhanjaya Perkhidmatan Awan & Anor* [Rayuan Sivil No: 01(f)-4-2009] (unreported) per Richard Malanjun CJSS, reminded that in cases of the nature now before this court:

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It should be borne in mind that the procedures prescribed therein are not intended to find the guilt or innocence of an officer charged as in a criminal trial. Further, the finding of guilt in disciplinary action under [GO] should not be equated with the kind of guilt as in any criminal case. Enquiry in disciplinary cases is not and should not take the colour of a criminal trial.

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[44] In the Court of Appeal decision in *Abd Razak Atan v. Dato' Ahmad Ragib Mohd Salleh & Ors* [2010] 6 CLJ 887 (also a case involving dismissal of a Police Inspector), Abdul Malik Ishak JCA observed as follows:

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Here, it was not denied that the plaintiff was never charged nor tried nor found guilty by any court of law. The issue of *prima facie* charges merely relate to '*prima facie*' in the disciplinary proceedings and not in a court of law. There was no evidence that the plaintiff was forgiven for his misconduct.

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[45] In this same Court of Appeal decision, Low Hop Bing JCA also articulated this point as follows:

The issue of *prima facie* charges here is '*prima facie*' in the disciplinary proceedings, and so there was no condonation by the defendants.

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Conclusion

[46] The allegation of the plaintiff that Zamurad (the complainant) had bad motives or that some others in the police force had devised the plaintiff's downfall were irrelevant to the issues at hand. In any event they were bare statements. No other witness (apart from the plaintiff himself) was called by the plaintiff to add any weight to his said

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A statement or claims. The first and second named defendants were witnesses for the defence and were cross-examined by counsel for the plaintiff. I did not find any violation of the applicable rules for the conduct of the disciplinary action taken against the plaintiff or that any injustice had been occasioned to the plaintiff. Accordingly I dismissed this action with cost.

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[47] In the particular circumstances of this case, I ordered that the cost to be paid by the plaintiff to the defendants be fixed at RM7,500 only.

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